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A Key Question in The Revulsion Against Stalinism

Will The Soviet Union Really Reform Its Criminal Code?

I

In his History of Russia, Bernard Pares tells us that the efforts of Nicholas I to help the peasantry "were prejudiced from the outset because the work was wholly entrusted to the bureaucracy and kept secret from the population, whose support was therefore never enlisted." The bureaucracy was hostile to the reforms and Nicholas "met with continuous resistance, which even went so far as the omission from new editions of such statutes as established peasant rights." This passage comes to mind when one discovers how secretive the present regime is about reforms in the criminal code.

One of the most important things one learns in the Soviet Union today is that the average Soviet citizen is considerably less informed than the foreign visitor about the changes being made in Soviet criminal law and procedure. The most striking instance of this is the abolition of the dreaded "Special Board" of the MVD.

When I interviewed Professor Sergei A. Golunsky, a member of the commission now at work on the revision of the Soviet criminal code, and asked him what changes had been made to give Soviet citizens greater protection against the secret police, the first thing he cited was this abolition of the Special Board. This Board had power to condemn without trial, on the basis merely of documentary charges by the MVD and without even seeing the accused. Professor Golunsky said this had been abolished in September, 1953.

The Censor Said No

What I did not learn until later was the extraordinary secrecy in which this reform was shrouded. It first became known to outsiders last August when Professor Harold J. Berman of the Harvard Law School visited the Soviet Union. When he asked Soviet jurists about the Special Board they told him it had been abolished but that the decree had never been published. Professor Berman said no one could explain why the decree was kept secret. He mentioned abolition of the Special Board in a talk he was invited to make before the Institute of Law in Moscow. But when newspaper correspondents tried to report the abolition in their dispatches, the censor refused to permit transmission of the news.

Although Professor Berman on his return wrote of this decree in last December's issue of the *Harvard Law School Bulletin,* it was not until this month that the Soviet censor allowed mention of the abolition of the Special Board. On May 4, in describing a talk which a group of visiting French Socialists had with Anatoli Votin, president of the Soviet Supreme Court, correspondents were allowed to report that Votin read the text of this decree to the visitors and that it had never been published in the Soviet Union. The only known news of it in the Soviet Union was a two line reference in last January's issue of *Sovetskoye gosudarstvo i pravo,* the monthly law journal published by the Institute of Law of the Academy of Sciences. This is, of course, a technical not a popular publication. Even there, despite the intense interest the reference must have aroused among Soviet lawyers, the text was not published.

Poor Journalism By Any Standard

As striking an example of the failure to inform the ordinary Soviet citizen of the changes being made or considered in criminal procedure occurred a few days before my interview with Professor Golunsky. This same law journal, *Sovetskoye gosudarstvo i pravo,* in its April issue carried an editorial criticizing Vishinsky and convictions by confession. A kind of grapevine seems to operate in Moscow when the regime wants it to, and this editorial in an obscure legal journal at once found its way into the hands of foreign correspondents. I raised the question with Professor Golunsky. I said the editorial was very encouraging and that full accounts had been cabled abroad where millions would read about it but that the average Soviet citizen would not know about it since the story had not been carried in the Soviet press. He had no explanation to offer.

By any standards, both these stories were sensationally important news. Only two months earlier, in his speech to the 20th Communist Party Congress, Voroshilov had declared that "a big role in the struggle for socialist law belongs to our press" and urged the need "for widely propagating Soviet law among the entire population." Even without such urging, "Special Secret MVD Board Abolished" and "Vishinsky Technique of Conviction by Confession Attacked" would have been legitimate 8-column lines across page one of *Pravda* and *Izvestia.* Since these are papers closely controlled by the Soviet government and the Communist Party, one wonders why neither story was printed. Are these changes in law and attitude encountering the same undercurrent of resistance in the Soviet bureaucracy that the peasant reforms of Nicholas encountered in the Czarist bureaucracy?

II

One of the principal reasons I wanted to visit the Soviet Union was to learn what had happened to the revision of the criminal code promised after Stalin's death and whether new safeguards were to be enacted to make the excesses and injustices of the Stalin period impossible. I want to try and picture the situation as it appears to the ordinary thoughtful Soviet citizen. The newspaper reader abroad sees frequent stories about reform of criminal procedure in Russia based on articles

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like that in *Sovetskoye gosudarstvo i pravo* and in interviews accorded foreign visitors. But these articles and interviews do not reach the ordinary reader in the Soviet Union. He must judge by what he reads in the press and the picture as his press reports it is a confusing one.

More than three years ago, on March 27, 1953, after the death of Stalin, a general amnesty was declared. The same day it was announced that the Ministry of Justice had been "instructed to draft appropriate proposals" for the reform of the criminal code and to present these to the Presidium of the Supreme Soviet within 30 days. Since then, beginning with Beria's exposure of the "doctors' plot" as a frameup and culminating in Krushchev's recent "secret" speech attacking the crimes and injustices which occurred under Stalin, there have been a series of exposes. Excesses by the secret police have been denounced and victims rehabilitated, but that promised revision of the criminal code has not yet been forthcoming, and the outlook for law reform is still confused. There is much talk of reform, but the emphasis is on a shakeup in the personnel of the secret police and in providing stricter supervision from above rather than in attacking the problem by providing new specific guarantees for accused individuals. The Soviet citizen hears attacks on Beria and Stalin and on "the cult of personality" but he hears little about concrete reforms to provide new checks on the secret police. On the contrary he still hears much that stresses the need for continued security surveillance and builds up that same atmosphere of suspicion on which police excesses thrived during the Stalin years.

The Enemy Is Everywhere

An example is provided by Krushchev's speech to the Young Building Workers on April 11. "The capitalists," Krushchev said, "are well able to defend their capitalist world and its exploiting order of things. They know how to organize their intelligence service and smuggle their spies and saboteurs into our country. . . . We must be able to recognize the enemy, to see through all his tricks in good time." If capitalist spies and saboteurs may be lurking everywhere, a vigilant and powerful secret police is necessary. This was Stalin's view. Krushchev's does not seem very different. In that same speech to the young building workers, immediately after this reference to "tricks," Krushchev said, "We must strengthen in every way the security of our state, be vigilant and nip in the bud all enemy activities. In criticizing the weaknesses and errors that have been made in the course of our advance, we must first of all see to it that this criticism strengthens the Soviet system." Criticism must be "constructive" but who is to determine whether a specific criticism is constructive or only an enemy activity "in the bud"? Krushchev went on, "Our enemies hope that we will relax our vigilance and weaken our state security service. No, this," he said, "will never happen! The proletarian sword must always be sharp, must always ably protect the gains of the revolution, the working class, the working people. (Prolonged applause)." This sounds remarkably like Stalin.

Under Stalin differences of opinion were constantly being translated into this kind of melodrama. It was in this atmosphere that the excesses and injustices now exposed were bred. But let us listen again to Krushchev, this time in his speech to the 20th party Congress and the same accents may be heard. "The imperialists," Krushchev told the Congress, "had placed special hopes on their old agent, Beria, who had *perfidiously wormed* his way into leading posts in the Party and the Government." (The italics are mine.)

Diabolism Soviet Style

If the "imperialists" are so devilishly clever that they can put an agent into the very highest circle of Soviet government, how can one live at peace with these imperialists, how can one trust them, indeed (for this kind of poisonous nonsense boomerangs) how can one trust the highest officials of the Soviet government itself? This picture of Beria "perfidiously" *worming* his way "into leading posts in the Party and the Government" is not calculated to create that calmer atmosphere in which a repetition of Stalinism may be avoided.

But let us listen again as Krushchev continues. "The Central Committee," Krushchev declared, "resolutely put an end to the criminal conspiracy of that dangerous enemy and his accomplices . . . the destruction of this gang of contemptible traitors helped further to strengthen the Party. . . . The Party has become still more monolithic." Wasn't the Party already too monolithic for its own good? Might not the abuses of the Stalin period have been avoided if it had been a little less monolithic? "The party's unity," Krushchev went on, "has been built up over the course of many years and decades; it grew stronger in battle with a host of enemies. The Trotzkyites, Bukharinites, bourgeois nationalists, and other malignant enemies of the people, the men who would restore capitalism, tried desperately to undermine the Party's Leninist unity from within—and all of them broke their necks." This is the same kind of rhetorical hydrophobia which marked the party speeches and encouraged the party witch hunt during the Stalin era.

III

Another "20 Years of Treason"

For more than 20 years, according to Soviet leaders themselves, their secret police apparatus has been headed by a series of traitorous monsters. Yagoda, Yehzov, Abakumov and Beria in turn were removed, disgraced and executed as foreign agents and frameup artists. As each man fell there were shakeups in personnel, victims were rehabilitated, reforms were promised. Yagoda came in as a reformer in 1934 when the old OGPU was abolished and the NKVD established; this was supposed to symbolize a shift from the older system of revolutionary terror to one of "Socialist legality." In 1939 Beria was assigned to "purge the purgers" and to correct wrongs done by the NKVD under Yagoda and Yehzov. The new leaders have executed Beria and told their people that during the last twenty years of his life Stalin was responsible for monstrous crimes. The main instrument of these crimes was the secret police, operating in a legal system which gave their victims none of the elementary safeguards we know in the West.

In any country where public opinion could express itself freely the result would be the abolition of the secret police and a reform of the whole legal system. But in Russia today, when one really tries to find out what is happening, the results are still vague and meager. The highest officer of the new regime, the new party leader, Krushchev, is ambiguous on the subject. "Experience has shown," he told the 20th Congress,

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"that the enemies of the Soviet State attempt to use the slightest weakening of Socialist law for their foul, subversive activity." He wants to "raise revolutionary vigilance among the Soviet people and strengthen the State security agencies."

Krushchev's Significant Omission

Krushchev's speech was the official report of the Central Committee and therefore the most important and authoritative address at the Party Congress. A section of the report is subtitled, "Development of Socialist Democracy, Improvement of the State Apparatus, Strengthening of Socialist Law." But Krushchev does not mention the promised revision of the criminal law. He talks as if the terrible things which happened were the results of faults in personnel (including, as it turned out from his later "secret" speech, Stalin) and not in the system itself.

After discussing the frameups in the Leningrad case, which he blames on Beria, Krushchev said, "The Central Committee has drawn important conclusions from all this." But among these conclusions he does not list the need to strengthen the rights of accused persons, to revise the hideously sweeping law against "counter-revolutionary crimes," or to cut down the powers of the secret police. His emphasis is on better supervision from above, and better personnel. "Proper control," he went on, "by the Party and the Government over the work of the State Security agencies has been established. Considerable work has been done to strengthen the State Security agencies, the courts and procurator's offices by putting in tried and tested people. The supervisory powers of the Procurator's Office have been completely reestablished and strengthened."

"We Trust Them"

To listen to Krushchev was to believe that while Beria was a monster the security system was essentially sound and the secret police on the whole good fellows. "It should be stated," he told the 20th Congress, "that because a number of cases have been reviewed and set aside, some comrades have begun to manifest a certain distrust for the workers of the State Security agencies. That, of course," he emphasized, "is incorrect and very harmful. We know that the overwhelming majority of our State Security personnel are honest people devoted to our common cause, and we trust them."

Discussion of the promised new criminal code at the Party Congress was left to the much less important speech made by Voroshilov, and he devoted only five paragraphs to it. He said that a new criminal code and a new code of criminal procedure were being drafted which would help to "safeguard the rights of citizens." But although Voroshilov spoke of the need for "immense activity in educating our cadres" in Socialist law, he did little "educating" himself. He did not touch on any of the rights to be safeguarded—on the right to counsel, on the right to know why one was arrested, on the right not to be subjected to prolonged interrogation in prison pending trial. Nor did he speak of the need for revising those terrible areas of Soviet criminal law in which treason and counter revolutionary crimes are so broadly defined as to invite injustice and make dissent of any kind dangerous. Like Krushchev he was specific on only one point, and that point stressed better supervision from the top.

"In accordance with the directives of the Central Committee of the CPSU (Communist Party of the Soviet Union)," Voroshilov said, "the Presidium of the Supreme Soviet of the U.S.S.R. has approved a new Instrument of the Procurator's Office in the U.S.S.R. Based on the Leninist teaching on the role and tasks of the Soviet Procurator's Office, the Instrument is a clear program of activity for the Office, confronts it with the task of being principled and irreconcilable in the struggle for strict observance of law by all establishments, responsible persons and citizens of the U.S.S.R."

It Began With Peter, Not Lenin

This bit from Voroshilov is Communist gobbledegook, and will be recognized as such by intelligent Soviet readers. Judging by past history, the Procurator's office is no substitute for a good criminal code. The Procurator's office is a peculiar Russian institution, founded by Peter the Great. The Prosecutor General was intended to be the cleansing arm and inspecting eye of the autocratic sovereign, an Inspector General with power to inquire everywhere and to punish whatever infractions of law he uncovered. The institution reflects the desire of a centralized autocracy for efficiency in administration—that, rather than justice for individuals, has been its emphasis under the Communists as under the Czars before them. All the excesses of the last 20 years occurred not only in spite of the Procurator General but with his fervent collaboration. Vishinsky was Procurator General during the worst of the 30's and one need only go back and read his idyllic description of the office in his "Law and the Soviet State" (1938) and check it against what we now know, to see how little confidence can be reposed in assurances that the powers of the Procurator have been "restored."

It is, for example, worth recalling that the Procurator was represented on that "special board" which has just now been abolished and that in 1934 when it was established the answer to those who feared its potentialities was that the Procurator would have a veto over its actions. It is also worth comparing Vishinsky's description in his book of the way any citizen may have his rights vindicated by complaint to the Procurator with Voroshilov's description at the Congress of how complaints generally are being handled. Voroshilov spoke of an "inattentive, harmful attitude to applications and complaints" and said it was "necessary resolutely to put an end to the bureaucratic attitude toward the complaints of the working people." Reliance on the Procurator General is no substitute for a system in which accused persons through private counsel and within the framework of strictly defined crimes can defend themselves in open court.

IV

No Secret Police?

Everything about my interview with Professor Golunsky was charming. I was even charmed with the nice lady at VOKS who arranged it after telling me that the Soviet Union did not have a secret police "not in the sense that you foreign newspapermen think" and after explaining to me that while the new government had admitted many "mistakes" in this field it had not said that past policy was wrong. (It was not till later that I began to realize how faithfully these fine split hairs actually conformed to the official line.)

Professor Golunsky gave me no such double talk. He turned out to be a tall, slim, aristocratic looking man in his fifties, a legal scholar with a cosmopolitan outlook and a thorough

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Still Reluctant To Make A Clean Break With The Past

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grasp of British and American law. He teaches law at Moscow University and it must be a privilege to be one of his students. I listened to him with pleasure and I came away with respect. If Russian scholars of his type had a free hand I believe one would see a welcome evolution within the framework of socialism back toward freedom of expression and a fundamentally safeguarded criminal law. And I am not at all sure, in the light of the swift and sensational developments since Stalin died, that there may not be a clean break in this direction one of these days. I think we Western intellectuals can help that process by resolutely refusing to mistake shadows for substance, and by insisting on real changes as the price of the rapprochement the new regime desires with the liberals, Socialists and independent Leftists of the West.

Still A Long Way to Go

But what my interview with Professor Golunsky showed me was that the Soviet Union still has a long way to go. The only two concrete reforms he could name were the abolition of the Special Board and the newly revised law of last year "strengthening" the Procurator's Office. The new code of criminal law and procedure still seems to be bogged down. In March, 1953, definite proposals were promised in 30 days. Last Fall Professor Berman was told the new law would be ready "about February." It is now May of 1956, and it was clear from my talk with Professor Golunsky that many good decisions were still in abeyance but that at least one bad one had already been made. The bad one is that there will be no revision of the notorious law of counter-revolutionary crimes.

The day the Soviet Union repeals this law will be the day the world will know that the new regime really means business. The first paragraph is enough to give its flavor and show the blank check it gives the police. "Any action is considered counter-revolutionary," the law says, "which is directed toward the overthrow, undermining or weakening of the authority of the Workers' and Peasants' Soviets, or of the Workers' and Peasants' Government (whether of the USSR or of a constituent or autonomous republic) . . . or towards the undermining or weakening of the external security of the USSR or of the fundamental economic, political and national gains of the proletarian revolution." This is sweeping enough to put any critic in jail, or frame any opponent.

Right to Counsel

Among the questions still in abeyance is whether accused persons shall have the right to have counsel present during their interrogation before trial. The question of the point at which private counsel may participate is not yet settled, though it will be an improvement over present practice where the counsel does not appear until the case is brought into open court. The question of when a man can have counsel is important. As Professor Golunsky explained, in ordinary cases the police will still be able to hold a man for 30 days before trial and in extraordinary cases for three months. This will also be an improvement since in practice the secret police have been able to hold a man as long as they liked without trial. But even one month, much less three, of unrestricted interrogation may be enough to break a man or force a false confession a la Vishinsky. (The new Yugoslav code provides for 8 hours uninterrupted rest during every 24 hours in which a prisoner is held for interrogation by the police). All trials will be public except those involving sexual crime or military or diplomatic secrets—the latter may prove a dangerous exception.

The new criminal code will be a test of the new regime. To make the vindication of injustice depend upon the Procurator General will be to allow the central autocracy to decide what rights shall be enforced and who shall get justice. To grant greater rights to the individual would be to weaken the central power and to make it possible for individuals injustly treated to enforce their rights in the courts against the State as they can in Western countries. Without revision of the definitions of treason and counter-revolution, freedom of discussion will not be achieved. The Soviet bureaucracy and leadership are obviously reluctant to go that far but ferment at home and criticism from abroad may yet force them toward fundamental reforms.

Another Installment Next Week of Stone's Visit to Moscow and Warsaw

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